

Mandatory Reporting Training – Q&A

June 24, 2020

If a teen (under 16) is pregnant, is it mandatory to report even if no other info is known?

We encourage you to reach out to your legal team to make a determination on what you have to report or not report. If you make that report, we will ask you all our questions. If you have no other information, other than the teen is 16 and pregnant, we will probably categorize that as informational. We always encourage people to report. Let us (CSFD) assess if there is a child safety issue.

Could you provide us a definition and examples of sexual abuse and exploitation? It would be helpful to understand what we should be reporting.

Refer to the statute on slide 14. Commission of sexual assault, sexual intercourse without consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, or incest. The definition in 41-3-102 is what we look at. The new definition of servitude was added to statute to capture the sex trafficking component that is growing across the nation.

Is there a link to basic guidelines for Mandatory Reporters that we could post to our website or State Plan so they can make the best decisions on when and what to report?

There is not a link to basic guidelines. If you believe, as a mandatory reporter, a child is abused or neglected then make a report. When you call Centralized Intake we assess based on the information you provide. We really work on enhancing the questions our centralized intake specialist ask so we can understand the functioning of the family, along with the incident, to determine what abuse may or may not have happened.

We get this question a lot. It is a common question – should we report this or not? We will always say report it. Let us (CSFD) gather more information from you and determine if it warrants an investigation.

If a 16 year old states she was forced to have sex by someone her age (he does not live in the home), do we report that?

Yes. We are always going to encourage you to report. The questions we are going to asking are - what are the parents doing about this? What do the parents know? Are the parents able to meet this child's needs? We don't manage the criminal side. Law enforcement does. So, whether it is a crime or not, is a different topic. We want to make sure that child is safe. We will want to know items like - what do the parents know? What do they know? How supportive are they? Does the child have the supports they need? There are a lot of things we will look at, outside of the criminal activity, that these questions are getting at.

How is the information submitted to CPS protected within your data system? Who has access to the information we report?

We have strict confidentiality laws in Montana. No one has access to our child protective system, except us, without legal approval. County attorneys do not have access into our system, nor does law enforcement. They have the ability to request information and we have to provide it. However, they can't come into our database and look at information.

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It sounds like everyone under 16 we need to report on if they are having intercourse, correct?

Seek out legal advice from your county attorney.

If yes, if a 15-year-old patient comes in and we report they were sexually active, and this patient comes back two weeks later for another appointment - Do we need to report again? Do we report every time they come in for services?

What you are reporting is your concerns of abuse or neglect - regardless of who it could be. If you have reported that this 15-year-old is sexually active, within that report, you are giving information that there are no concerns of abuse or neglect, we just have a sexually active 15 - year-old that is seeking services for good reason. You don't have to tell us every time they come into the office. You as a mandatory reporter have fulfilled your duty that you have informed us about what your concerns are. If we have additional questions, we can reach out, but you do not have to call us every time the patient comes in.

If you are only investigating when abuse is from a caregiver, why are we reporting when a 15 year old is having "consensual" intercourse with their partner? What is the point?

I can tell you what we do with the information. We would categorize it as informational only. What is helpful, is when you give us information around how the family is managing the situation. As in, if there are no concerns and the child has the supports they need to be safe, we categorize it as information only. Which means it stays as information in our system. The report is closed. We as an agency do not do anything with it. Based on the statute, we do have to cross report this to the county attorney and law enforcement and then they make their decision on what they do with that.

What does it mean to cross report with law enforcement?

We send our report to the local law enforcement agency where the alleged crime occurred.

We fill out the HB640 form and send to the county attorney with information reported to us.

We ask if the victim wants this information reported to the county attorney, if the victim is 14 or older. If you say no, we don't send any information to the county attorney. If yes, we turn this form and information over to the county attorney.

We report criminal activity into law enforcement. Children under 16 cannot consent.

What does law enforcement do with this information?

What we know at this time, unless there is additional information (as in an adult perpetrator), we don't believe law enforcement does significant work with this information.

In your communities you have multi-disciplinary teams or child advocacy centers. These are great conversations to have around that setting and may provide more clarity at the local level on this issue.

A 16-year-old who was forced to have sex by someone her age - are we mandated to report it? Or is it just that we are encouraged to report?

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If you believe a child, under that age of 18, is at risk of abuse or neglect or has been abused or neglected, you are mandated to report.

Seek legal advice from your agency attorney. You may have evidence of a crime. We don't know what requirements mandatory reporters must report to law enforcement.

Who calls law enforcement if they are needed? CFS or nurses?

We (CFSD) will cross report. Talk to your attorneys and see if you also need to report to law-enforcement.

What do you do when you've made a report of suspected abuse and the family finds out you've reported and threatens you or points you out at your work site? What measures should be taken to self-guard/protect?

Will the family know who reported? No, by statute we are not able to tell them who reported. Families may guess and parents may be upset. We can not confirm or deny. Sometimes a lack of response is interpreted by families as affirmation.

Consult your safety protocols for your agency for those that are threatening your workers of facility.

Is the section for 14+ for everyone over age 14 or just 14-16-year-olds?

HB640 only applies to those who are 14-17 (a minor child).

If both teens are 15 (mom and dad unaware)- it would not be considered abuse? Or would they both be considered an abuser since neither can consent?

Based on the way consent statutes say it, under age 16 can not consent. For us, we would gather all the information and determine if we need two reports (one for each family) or if all the information is consensual and neither child is unsafe. That may just be one CPI (information only report) that gets sent to the county attorney or two identical reports that say the same thing and categorized under each child's name.

What if a parent is aware of the daughter/son being sexually active under 16 and makes the appointment to our program for birth control, is this still reportable? Our county attorney and law enforcement do NOT want to know this information on a confidential teen visit. This seems like two extra agencies in our community will know that a mom is aware of a teens sexual activity.

We can't speak to how every county wants it done. Every county potentially has a different approach to all of it. We have to look at what the statute requires and comply with that state-wide. We think it is great to have those conversations at the local level. If you report we have to follow our process of gathering information and cross reporting as the law requires.

So for the HB640 form, persons under age 18 can refuse to notify the county attorney, but persons 18+ cannot refuse to notify the county attorney?

HB640 just talks to child sexual abuse. Once they are 18 they don't fall in our spectrum.

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I may be wrong, but we don't report EVERY 16 and under sexually active teen. We report if there is abuse or neglect suspected. For instance, if a 14-year-old has 10 partners and mom and dad know, that may need to be reported. If a 15-year-old has one partner and that partner is under 18, and there is no sign of abuse, there should be no sign of abuse. Do we report everyone under 15?

I would direct you to your local attorney on how to direct you around that and their interpretation of the statute. If you call us, we are going to take as much information from you and determine what to do with that information.

What is the statute of limitations for us to report?

That's a great question. The statute of limitations is more around the criminal law. You can report into us at any point. Based on the information, we may or may not be able to do anything with it - looking at the individual situation and all the information. We often times deal with a child in therapy, or a young adult is in therapy and they disclose something that happened as a child. We get those calls and take that information and cross report it, where appropriate. We would not tell you that you can't call us because it is after a certain amount of time.

I am confused if this is a Montana law, why each county would handle it differently.

Good question. We have no answer to that. County attorneys, law enforcement, and local law enforcement operates differently. Something we can say, as a state agency, even at centralized intake, is that every county wants us to send reports over in different manners and different ways. And they do different things with it. We do our best to meet with the request of people at the county level in the context of what we are required to do.

Does your Centralized Intake prioritize for Tribal Jurisdictions?

No. We send it over and they do their own prioritization.

I've looked into the MCA for domestic violence as being one of the mandated conditions to report and did not find anything specific. Can you share the MCA or ARMs for that?

So, those definitions, under the child abuse and neglect statutes (41-3-102) talk about all the definitions for child abuse and neglect. And it does talk to family violence or exposure to family violence in our definitions under physiological abuse. And physical abuse.

The form for HB640 has a question about whether the victim sought services from a contractor that provides confidential services to victims of sexual assault. If the answer to that question is yes, how would the response from CPS be different than if the answer is no?

We are going to look at the totality of information. That question is based on the statute, based on how we cross report to the county attorney – not how we respond. So, we will ask questions if we have concerns regarding the overall safety of the child based on the parent's ability, lack of ability, or their responses. That question allows us to ask if the service provider knows if they want the information reported to the county attorney.

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When you send your report to law enforcement, do you tell them what organization sent the report?

Your organization name will not be entered on the report. However, your name and contact information will be entered on the report as the reporter.

Is there still a 4 year age difference or 21 years of age rule??

This falls under the criminal law. We are not as familiar with this piece.

If a 16-year-old reports that her step dad hit her in the past, he still lives in the home but is not currently hurting her, do we still report that?

The law says, if you believe as a mandatory reporter that you have reasonable cause to suspect that child abuse or neglect has happened – you must report. If you report, we are going to ask a variety of questions to really assess what the situation looks like. How is she doing? Did this happen a week ago? Two years ago? Based on the responses, this would get reported as informational or a report. We always encourage you to report. We will collect as much information as we can to make a decision.